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Attorneys for Defendants
CITY OF UKIAH and UKIAH VALLEY
SANITATION DISTRICT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION

NORTHERN CALIFORNIA RIVER WATCH,
a non-profit corporation,

Plaintiff,

v.

CITY OF UKIAH; UKIAH VALLEY
SANITATION DISTRICT; and DOES 1 through
10, inclusive,

Defendants,

CASE NO: C04 4518 CW

NOTICE OF PROPOSED
CONSENT DECREE AND
ORDER

Complaint Filed: 10/6/04
2nd Amended Complaint Filed: 6/13/05

Pursuant to 33 U.S.C. 1365(c)(3), notice is hereby given that the parties have approved a
settlement of this action in the form of the [Proposed] Consent Decree and Order, a copy of which is
attached hereto as Exhibit 1. Pursuant to 33 U.S.C. 1365(c)(3), judgment may not be entered pursuant to
this proposed consent decree until 45 days following receipt of it by the United States Attorney General

2005 NOV 28 PM 6:10

ENVIRONMENT & NATURAL
RESOURCES DIVISION
APPELLATE SECTION

2005 NOV 29 PM 4:13

ENVIRONMENT & NATURAL
RESOURCES DIVISION
APPELLATE SECTION

1 and the Administrator of the Environmental Protection Agency. The Parties shall apply to the Court for
2 approval of this consent decree after the expiration of this 45-day review period.

3 Dated: November 21, 2005

JARVIS FAY & DOPORTO, LLP

5
6 By: _____/s/_____
7 Rick W. Jarvis
8 Attorneys for Defendants CITY OF UKIAH and
9 UKIAH VALLEY SANITATION DISTRICT
10

11 J:\Clients\107 [Ukiah]\002 Riverwatch II]\Plead\Notice of Proposed Consent Decree.wpd
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EXHIBIT 1

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CASE NO: C04 4518 CW

**[PROPOSED] CONSENT DECREE AND
ORDER**

Complaint Filed: 10/6/04
2nd Amended Complaint Filed: 6/13/05

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1 **I. JURISDICTION**

2 1. This Court has jurisdiction over the subject matter and the parties in this action pursuant
3 to Section 505 of the Act, 33 U.S.C. § 1365. The complaint filed by River Watch states a claim upon
4 which relief can be granted pursuant to Section 505 of the Act, 33 U.S.C. § 1365.

5 2. Venue is proper in this Northern District of California pursuant to Section 505(c)(1) of
6 the Act, 33 U.S.C. § 1365(c)(1), because this is the judicial district in which the District's wastewater
7 treatment plant is located.

8 **II. APPLICABILITY AND BINDING EFFECT**

9 3. This Consent Decree shall apply to and be binding upon River Watch, the District, the
10 City, and their respective employees, agents, successors, and assigns. To the extent that federal law
11 (including federal principles of res judicata) allows, this Consent Decree shall also be found binding
12 upon other private parties who may hereafter file a citizen suit against the District or the City for alleged
13 violations of the Clean Water Act which have been alleged in this action. However, this Consent
14 Decree shall not be construed to limit the authority of the United States under Section 309 of the Act, 33
15 U.S.C. § 1319, or of the State of California (including the Regional Board) under California law.

16 **III. INJUNCTIVE RELIEF**

17 4. In order to settle River Watch's claim for injunctive relief against future alleged
18 violations, the City and the District shall exercise their best efforts to implement the specific measures
19 described below. Each of these measures require the City or the District to take actions over and above
20 those actions they have historically taken, in order to substantially reduce the potential for NPDES
21 Permit violations in the future.

22 5. As used herein, the term "date of this Consent Decree" shall refer to the date this Consent
23 Decree is executed by the Court.

24 6. In order to help reduce infiltration and inflow, the City and the District (as specified
25 below) shall implement the following measures:

- 26 a. Within four years of the date of this Consent Decree, the City shall complete a
27 televideo inspection of all City and District sewer mains, to identify any
28 maintenance issues or improper cross-connections.

1 b. Within one year of the date of this Consent Decree, the City shall implement a
2 sewer lateral inspection, repair, and/or replacement program within the City of
3 Ukiah. Such a program shall include mandatory sewer lateral inspection at point
4 of sale and in conjunction with sewer main repair or replacement. Repair or
5 replacement of sewer laterals shall proceed according to the need indicated by
6 inspection. This program need not apply to inter-family transfers, trust transfers,
7 or transfers via inheritance.

8 c. Within one year of the date of this agreement, the District shall implement a
9 sewer lateral inspection, repair, and/or replacement program within the area
10 served by the District. The District shall comply with this requirement by
11 adopting a program which meets one of the following two sets of criteria:

12 (1) Such a program may consist of a requirement for mandatory sewer lateral
13 inspections at point of sale and in conjunction with sewer main repair or
14 replacement. Repair or replacement of sewer laterals shall proceed
15 according to the need indicated by inspection. Such a program need not
16 require inspections for the following sales of property:

17 (i) Inter-family transfers, trust transfers, or transfers via inheritance.

18 (ii) Sales of property where the cost of the property is less than
19 \$500,000. This figure may be indexed pursuant to a reasonable
20 cost-of-living adjustment starting after five years.

21 (iii) Sales of properties whose sewer laterals are more than 500 feet
22 from streams or other surface waters which flow into the Russian
23 River.

24 (iv) Sales of properties whose sewer laterals have already been
25 inspected within the last 25 years, where the sewer lateral is made
26 with PVC, metal, or other modern material meeting the
27 requirements of the current Uniform Plumbing Code or equivalent
28 building code.

- 1 (v) Sales of properties whose sewer laterals have already been
2 inspected within the last 10 years, where the sewer lateral is not
3 made with PVC, metal, or other modern material meeting the
4 requirements of the current Uniform Plumbing Code or equivalent
5 building code.
- 6 (vi) Sales of structures whose laterals were last installed or replaced
7 within the last 25 years, where the sewer lateral is made with PVC,
8 metal, or other modern material meeting the requirements of the
9 current Uniform Plumbing Code or equivalent building code.
- 10 (2) As an alternative to (1), the District may develop an alternative program
11 where inspections are not necessarily triggered by property sales, but may
12 be prioritized using other criteria (such as age and type of lateral piping
13 material). Such a program shall be sufficient so long as the program is
14 reasonably designed to provide for inspection of 20% of existing sewer
15 laterals within the District within the first 7 years, including a mechanism
16 to provide funding necessary for such inspections. Where the inspections
17 disclose defects in the sewer laterals, the program shall require repair
18 and/or replacement, as necessary. The terms of the alternative program
19 shall be subject to the review and consent of River Watch, but River
20 Watch may not unreasonably withhold its consent so long as the program
21 satisfies the requirements set forth in this paragraph.

22 Following adoption of one of these programs, the District retains the discretion to
23 modify the program as it finds appropriate, so long as the program continues to
24 comply with the requirements of (1) or (2) above (including being subject to the
25 review and consent of River Watch, which consent may not be unreasonably
26 withheld, as set forth in (2) above).

- 27 d. The City and the District are unaware of any illegal connections to their sewer
28 collection lines. The City and the District shall require elimination of any such

1 illegal connections of which they hereafter become aware, including any storm
2 drains or basement sump pumps, within one year of learning of them.

3 7. In order to address the potential for overflows from the collection system, the City shall,
4 within one year of the date of this Consent Decree, develop additional, more detailed protocols for the
5 initial field reporting of collection system overflows from the City and District sewer lines, in order to
6 provide a clear record of any such overflows. These protocols shall include the following information:

- 7 a. Identification of the person who received the call reporting the incident and who
8 dispatched the clean-up and repair crew; the time of the call; the location of the
9 spill or problem; and the name of the person reporting the call. The staff person
10 receiving the call shall ask the caller for his or her name, address, phone number,
11 duration of the observed problem, and knowledge of any history of prior problems
12 in the same area, along with any other comments the caller might wish to make.
13 Answers shall be recorded on an intake form or other service sheet.
- 14 b. The service crews shall record the following information: (a) the time of the
15 crews' arrival and departure, (b) whether the overflow was ongoing at the time of
16 arrival, (c) estimated gallons per minute; (d) estimated duration of the overflow;
17 (e) whether the overflow reached a storm drain or surface water; (f) measures
18 taken to repair the system and remediate the damage; and (g) cleaning protocols
19 including whether any chemicals were discharged in the course of clean up.
- 20 c. The City understands that the San Francisco Bay Regional Water Quality Control
21 Board has developed a draft sanitary sewer overflow and monitoring program,
22 and the City shall monitor further development of this program, and shall consider
23 modifications to the City's own spill reporting and response program when the
24 S.F. Regional Board's program is implemented (notwithstanding the fact that the
25 City is not within the jurisdiction of the San Francisco Bay Regional Water
26 Quality Control Board).

27 8. The City and the District understand that the Regional Board is considering
28 implementing regulations for operating collection systems, sometimes referred to as Capacity,

1 Management, Operation and Maintenance ("CMOM") regulations. In maintaining the collection lines
2 of the City and the District, the City shall comply with all applicable CMOM regulations adopted by the
3 Regional Board. This consent decree shall be without prejudice to the right of River Watch to file
4 additional legal or administrative action against the City and/or the District in the future challenging
5 their compliance with any applicable CMOM regulations, but the City and the District reserve all legal
6 defenses they have to any such actions, including any available jurisdictional challenges.

7 9. Within 18 months from the effective date of this agreement, the City shall, subject to the
8 approval of the Regional Board, have installed at least one additional groundwater monitoring well,
9 located down gradient from the City's percolation ponds and between the ponds and the Russian River.
10 The City shall submit a proposal to the Regional Board, making a good faith attempt to have the well
11 placed in a location well suited to assess the effects of the ponds on the water quality of the surrounding
12 aquifer and the Russian River. River Watch shall have the opportunity to comment upon this proposal.
13 If the Regional Board finds that this one additional groundwater monitoring well, together with the
14 existing monitoring wells, does not adequately characterize the potential groundwater impacts of the
15 percolation ponds, the Board may require the City to construct one more well (for a total of two
16 additional wells). This agreement is subject to the City acquiring necessary property rights from an
17 adjacent landowner, but the City will use its best efforts to do so. The City shall include sampling
18 results from the monitoring wells in the monthly self monitoring reports.

19 **IV. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

20 10. Within one (1) year of the approval and entry of this Settlement Agreement, the City
21 shall undertake a healthy waterways study, the cost of which to the City shall not exceed \$35,000.00,
22 including consultant fees and expenses, and excluding internal City staff costs. The study shall be
23 performed in accordance with the following requirements:

- 24 a. The study shall consist of sampling for potential human markers as set forth in the
25 protocol for the study, which shall be developed by the City within six (6) months
26 of the execution of this Agreement. The protocol shall be provided to River
27 Watch for approval, which approval shall not be unreasonably withheld. River
28 Watch shall return, in writing, any comments it may have on the protocol within

1 twenty-one (21) days of submittal by the City.

2 b. The purpose of the study shall be to determine whether elevated levels of human
3 markers indicating sewage pollution exist in the surface water of the Russian
4 River and selected feeder creek(s) within the City of Ukiah. Creeks shall be
5 selected for sampling based on their proximity to sewage lines. The creeks
6 closest to the oldest lines where structural defects have been identified shall
7 receive the highest priority. The City shall make a good faith effort to sample all
8 of the highest priority creeks within the limits of the available budget. If elevated
9 levels of human sewage markers are found, one study objective is to determine if
10 there is any correlation between potential leakage from sanitary sewers which are
11 proximate to the impacted waters and the contamination found in those segments
12 of the creek(s) or River. If it is determined that a positive correlation exists
13 between the condition of proximate sewers and creek water quality related to
14 human sewage markers, the City shall use the study results to prioritize sewer
15 inspection activities. All creek sample results shall be provided to River Watch
16 for its review. The City shall act in good faith to take the results of these studies
17 into account in its maintenance activities with respect to its sewage collection
18 lines, in determining whether to repair or replace any of its lines, and in
19 prioritizing the repair and/or replacement of its sewer lines.

20 c. The details of the study shall be more specifically determined and set forth in the
21 protocol yet to be developed. The City shall develop a protocol which shall
22 attempt to address several approaches, including a study that provides for
23 sampling at one or more feeder creeks (hopefully non-ephemeral creeks) at first
24 flush and low flow, as well as at wet weather flow conditions. One marker which
25 shall be evaluated for use is that of caffeine. Caffeine or some other similar
26 marker shall be used for initial testing. To the extent that marker is found in the
27 study areas at a level which suggests potential sewage related pollution, follow up
28 sampling for fecal coliform and nutrients shall occur. The protocol shall set forth

1 appropriate locations for sampling including, potentially, sampling at the mouth
2 of feeder creek(s). The City shall use its best efforts to prepare the protocol in
3 such a manner to maximize the achievement of the objectives set forth in these
4 paragraphs 2 and 3. Although the protocol may modify these suggested
5 approaches as needed to provide a sound, cost effective study, the City shall act in
6 good faith to undertake the study in a manner which has the best potential to
7 demonstrate a correlation, or lack of correlation, between creek pollution and the
8 condition of adjacent sanitary sewers at a cost within the available budget.

- 9 d. The City shall provide the County Department of Health Services (DHS), or other
10 local agency responsible for monitoring recreational waters and beaches with
11 regard to sanitation and healthfulness, including the posting of public notices,
12 with creek water quality testing results and aid said agency in taking appropriate
13 efforts to protect the public using recreational waters and beaches, including
14 posting warning signs if found to be appropriate.

15 **V. SETTLEMENT AND RELEASE OF CLAIMS**

16 11. Upon the entry of this Consent Decree, River Watch, on behalf of itself and its members,
17 successors, and assigns, agrees that it releases, acquits, and forever discharges the City, its City Council,
18 the District, its Board, and all employees thereof, from all claims, rights, liabilities, and causes of action
19 arising from or connected with the events referred to, or which could have been referred to, in River
20 Watch's Notice of Intent or the Complaint in this lawsuit, including without limitation, all claims for
21 violations of the Clean Water Act or the Porter Cologne Act, or any other federal or state law, which
22 occurred at any time up to and including the effective date of this Consent Decree.

23 12. The releases set forth in this Consent Decree are not conditioned upon timely compliance
24 by the District or the City with the payment and other obligations of this Consent Decree, and River
25 Watch agrees that its exclusive remedies for a breach of this Consent Decree by the District or the City
26 shall be to move the Court for specific performance, contempt and any other remedies which the law
27 provides for such a breach. The releases set forth in this Consent Decree extend to unknown as well as
28 known claims. River Watch hereby waives the benefits of section 1542 of the California Civil Code,

1 which provides as follows:

2 "A general release does not extend to claims which the creditor does not
3 know or suspect to exist in his favor at the time of executing the release
4 which if known by him must have materially affected the settlement with
5 debtor."

6 13. In further consideration of the City's and the District's agreement to enter into this
7 Consent Decree, River Watch, for itself, its members, successors and assigns, covenants and agrees not
8 to sue or take any other steps to enforce any claims, rights, liabilities, or causes of action released
9 hereby. Furthermore, River Watch, for itself and its members, successors and assigns, agrees and
10 covenants that it will not file any lawsuits for any violations of the Clean Water Act or Porter Cologne
11 Act committed by the City or the District during the five (5) year period from the effective date of this
12 Consent Decree, and that River Watch's sole remedy against the District or the City during this period
13 shall be to enforce this Consent Decree by motion for court order. River Watch further covenants and
14 agrees that, at least sixty (60) days before filing any such motion with the Court, it shall notify the City
15 in writing of what actions or inactions by the City it deems to be in violation of this Consent Decree.
16 Thereafter, the parties shall meet and confer in a good faith attempt to resolve their disputes hereunder.
17 If the parties cannot informally resolve the dispute, they will make a good faith effort to mediate the
18 case under the ADR Rules of the Northern District of California prior to the filing of any motion to
19 enforce this Consent Decree. The auspices of the ADR office of this Court may be used to effectuate
20 such mediation.

21 14. This Consent Decree may be pleaded as a full and complete defense to, and may be used
22 as the basis for any injunction against, any action, suit or other proceeding which may be instituted,
23 prosecuted or attempted in breach of this Consent Decree, whether by the parties hereto, any of River
24 Watch's members, successors or assigns, or any third party seeking to assert rights held by the public or
25 any member thereof, whether under the doctrines of res judicata, collateral estoppel, breach of contract
26 or any other law applicable to consent decrees. River Watch covenants and agrees not to cause any third
27 party to commence a citizen's suit under the Clean Water Act for any permit violations which occurred
28 prior to the effective of the Consent Decree or at any time while this Court retains jurisdiction to enforce

1 this Consent Decree.

2 **VI. ATTORNEY'S FEES AND COSTS**

3 15. Within fifteen (15) days of entry of the Consent Decree by the Court, the City and the
4 District agree to pay River Watch \$45,000 to settle its claim for attorney's fees and costs incurred in this
5 action. This payment shall satisfy in full all claims by River Watch for attorney's fees and costs
6 incurred in this action, including any fees and costs associated with the monitoring of compliance with
7 this Settlement Agreement, with the exception of attorney's fees and costs incurred in the course of
8 enforcing this Settlement Agreement in a court of law or by arbitration or mediation. The City's check
9 in payment of these fees shall be made payable to Northern California River Watch.

10 16. The District and the City shall bear their own attorneys' fees and costs.

11 **VII. NOTICE TO THE FEDERAL GOVERNMENT**

12 17. The Parties acknowledge and agree that entry of this Consent Decree is subject to the
13 requirements of Section 505(c)(3) of the Act, 33 U.S.C. § 1365(c)(3), which provides that "[n]o consent
14 judgment shall be entered in an action in which the United States is not a party prior to 45 days
15 following receipt of a copy of the proposed consent judgment by the Attorney General and the [EPA]
16 Administrator." Following the Parties' execution of this document, the City shall serve copies upon the
17 EPA Administrator, the Attorney General, and the Regional Administrator of EPA Region IX in San
18 Francisco, in accordance with 40 C.F.R. § 135.5(a).

19 **VIII. GENERAL PROVISIONS**

20 18. All communications between River Watch and Defendant shall be made as follows:

- 21 a. To the City: City Manager
22 City of Ukiah
23 300 Seminary Avenue
24 Ukiah, CA 95482
- 25 With a copy to: Rick W. Jarvis
26 Jarvis, Fay & Doporto, LLP
27 475 14th Street, Suite 260
28 Oakland, CA 94612
- 29 b. To the District: Board of Directors
30 Ukiah Valley Sanitation District
31 501 Low Gap Road, Room 1010
32 Ukiah, CA 95482

c. To River Watch:

River Watch
6741 Sebastopol Ave, Suite 140
Sebastopol, CA 95472

With a copy to:

Jack Silver, Esq.
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402

19. This Consent Decree and its terms shall inure to the benefit of and be binding upon each of the parties and each and all of their respective predecessors, successors, assignees, buyers, grantees, vendees or transferees and their past or present, direct or indirect, partners, parents, subsidiaries or divisions as though they were parties to this action.

20. Each of the parties have been fully advised by their attorney as to this Consent Decree and all provisions contained within it, or have decided voluntarily to forego such advice with the full understanding of the repercussions of so doing, and acknowledge signing this Consent Decree based solely upon the written representations contained in this Consent Decree and not based on any inducement, promise or representation not expressly stated in this Consent Decree. Additionally, each of the parties acknowledges, in signing this Consent Decree, that it constitutes the full, complete, and entirety of the terms and conditions agreed to by them in settling the dispute between them.

21. The City and the District covenant and agree that, before commencing any action or motion to enforce the terms of this Consent Decree, they will provide River Watch with the same 60-day notice, meet and confer procedure and mediation rights as are set forth in Paragraph 13 above.

22. This Consent Decree is made and entered into under the laws of the State of California and the United States and shall be interpreted, governed and enforced pursuant to these laws.

23. Should any provision of this Consent Decree be held invalid or illegal, such illegality shall not invalidate the remainder of this Consent Decree. In that event, this Consent Decree shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly.

24. The parties have mutually negotiated this Consent Decree and the doctrine of contra proferentum does not apply.

25. Each signatory of this Consent Decree signing on behalf of another, warrants that he or

1 she has the authority to sign on behalf of said person or entity and all persons covered by this Consent
2 Decree. This Consent Decree may be executed in counterparts with each counterpart being interpreted
3 as an original.

4 **IX. RETENTION OF JURISDICTION**

5 26. This Court shall retain jurisdiction to enforce the terms and conditions of this Consent
6 Decree and to resolve any disputes arising hereunder for a period of five years from its entries. After
7 this five years has elapsed, the City and the District's obligation to comply with the injunctive relief
8 provided for herein shall terminate.

9 **IT IS SO AGREED AND STIPULATED:**

10 Dated _____, 2005

NORTHERN CALIFORNIA RIVER WATCH

11
12 By: _____
13 Its: _____

14 Dated _____, 2005

CITY OF UKIAH

15
16 By: _____
17 Its: _____

18 Dated _____, 2005

UKIAH VALLEY SANITATION DISTRICT

19
20 By: _____
21 Its: _____
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1 APPROVED AS TO FORM:

2 Dated: _____, 2005

LAW OFFICES OF JACK SILVER

3
4 By: _____
Jerry Bernhaut
Attorneys for Plaintiff NORTHERN CALIFORNIA
5 RIVER WATCH

6 Dated: _____, 2005

JARVIS FAY & DOPORTO, LLP

7
8 By: _____
Rick W. Jarvis
Attorneys for Defendants CITY OF UKIAH and UKIAH
9 VALLEY SANITATION DISTRICT

10 IT IS SO ORDERED.

11 Dated and entered into this _____ day of _____, 2006.

12
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14 _____
CLAUDIA WILKEN
15 United States District Judge

16 J:\Clients\107 [Ukiah]\[002 Riverwatch II]\Plead\Consent Decree 11-10-05.wpd

1 she has the authority to sign on behalf of said person or entity and all persons covered by this Consent
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8 provided for herein shall terminate.

9 **IT IS SO AGREED AND STIPULATED:**


10 Dated 11/17, 2005

NORTHERN CALIFORNIA RIVER WATCH

11
12 By: 
13 Its: Secretary/Treasurer

14 Dated 11-14, 2005

CITY OF UKIAH

15
16 By: 
17 Its: City Manager

18 Dated _____, 2005

UKIAH VALLEY SANITATION DISTRICT

19
20 By: _____
21 Its: _____
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9 **IT IS SO AGREED AND STIPULATED:**

10 Dated _____, 2005

NORTHERN CALIFORNIA RIVER WATCH

11

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By: _____
Its: _____

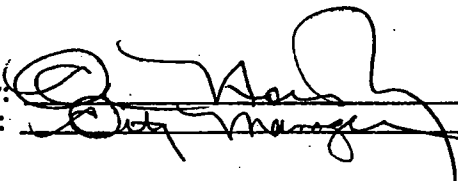
13

14 Dated 11-14, 2005

CITY OF UKIAH

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16

By: 
Its: City Manager

17

18 Dated _____, 2005

UKIAH VALLEY SANITATION DISTRICT

19

20

By: _____
Its: _____

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8 provided for herein shall terminate.

9 **IT IS SO AGREED AND STIPULATED:**

10 Dated _____, 2005

NORTHERN CALIFORNIA RIVER WATCH

11
12 By: _____
13 Its: _____


14 Dated _____, 2005

CITY OF UKIAH

15
16 By: _____
17 Its: _____

18 Dated _____, 2005

UKIAH VALLEY SANITATION DISTRICT

19
20 
21 By: _____
22 Its: _____
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1 APPROVED AS TO FORM:

2 Dated: 11/17, 2005

LAW OFFICES OF JACK SILVER

3 By: Jerry Bernhaut
4 Jerry Bernhaut
5 Attorneys for Plaintiff NORTHERN CALIFORNIA
6 RIVER WATCH

7 Dated: 11/21, 2005

JARVIS FAY & DOPORTO, LLP

8 By: Rick W. Jarvis
9 Rick W. Jarvis
10 Attorneys for Defendants CITY OF UKIAH and UKIAH
11 VALLEY SANITATION DISTRICT

12 IT IS SO ORDERED.

13 Dated and entered into this _____ day of _____, 2006.

14 CLAUDIA WILKEN
15 United States District Judge

16 J:\Clients\107 [Ukiah]\002 Riverwatch II\Plead\Consent Decree 11-10-05.wpd

EXHIBIT A

to [Proposed] Consent Decree and Order

August 13, 2004

**CERTIFIED MAIL --
RETURN RECEIPT REQUESTED**

Gerald L. Gall, Treatment Plant Supervisor
Head of Operations
City of Ukiah Wastewater Treatment Plant
300 Plant Road
Ukiah, CA 95482

RE: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Mr. Gall and/or other Head of Operations:

Section 505(b) of the Federal Water Pollution Control Act ("Clean Water Act") requires that sixty (60) days prior to the initiation of a civil action under 33 U.S.C. §1365(a), §505(a) of the Clean Water Act, a citizen must give notice of his/her intent to sue to the alleged violator, the U.S. Environmental Protection Agency, the State in which the violations occur and the registered agent of the alleged violator.

The Clean Water Act requires that any notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify:

- (1) the specific standard, limitation, or order alleged to have been violated;
- (2) the activity alleged to constitute a violation;
- (3) the person or persons responsible for the alleged violation;
- (4) the location of the alleged violation;
- (5) the date or dates of such violation or a reasonable range of dates during which the alleged activity occurred; and,
- (6) the full name, address, and telephone number of the person giving notice.

City of Ukiah Wastewater Treatment Plant
Notice of Violations and Intent to File Suit - CWA
August 13, 2004

Northern California River Watch ("River Watch") hereby places the City of Ukiah ("Ukiah") on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch intends to bring suit in Federal District Court against Ukiah for its continuing violations of "an effluent standard or limitation", permit condition or requirement and/or "an order issued by the Administrator or a State with respect to such standard or limitation" under § 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Basin Plan, as exemplified by Ukiah's failure to comply with the conditions and limitations of its National Pollutant Discharge Elimination System ("NPDES") Permit No. CA0022888, Order No. 99-65, ("Permit"), issued by the Regional Water Quality Control Board, North Coast Region ("RWQCB") pursuant to § 402 of the Clean Water Act, 33 U.S.C. § 1342, at the City of Ukiah Wastewater Treatment facility identified in said Permit, located in Mendocino County, California.

I. BACKGROUND

The Clean Water Act regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of several enumerated statutory exceptions. One such exception authorizes a polluter who has been issued a permit pursuant to the NPDES, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a polluter in violation of 33 U.S.C. § 1311(a). Private parties may bring citizen's suits pursuant to 33 U.S.C. § 1365 to enforce effluent standards or limitations, which are defined as including violations of 33 U.S.C. § 1311(a), 33 U.S.C. § 1365(f)(1).

The Clean Water Act provides that, in any given state or region, authority to administer the NPDES permitting system can be delegated by the federal Environmental Protection Agency ("EPA") to a state or regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria. 33 U.S.C. § 1342(b). In California, the EPA has granted authorization to a state regulatory apparatus, comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards, to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this Notice is the RWQCB.

Ukiah owns, maintains, and operates a wastewater treatment, reuse and disposal facility ("the Facility") which serves the City of Ukiah and adjacent areas. The Facility is permitted to discharge into the Russian River.

City of Ukiah Wastewater Treatment Plant
Notice of Violations and Intent to File Suit - CWA
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Pursuant to § 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), the EPA and the State of California have formally concluded that violations by Ukiah of its NPDES Permit, are prohibited by law. Beneficial uses of the Russian River in the vicinity of the Facility and its discharges are being

affected in a prohibited manner by these violations. Pursuant to § 304 of the Clean Water Act, 33 U.S.C. § 1311, the EPA and the State have identified Ukiah's Facility as a point source, the discharges from which contribute to violations of applicable water quality standards.

Ukiah's Facility is designed for an average dry weather flow of 2.8 mgd and wet weather flows of 7.0 mgd. Although current average dry weather flows are close to the Facility's design of 2.8 mgd, the wet weather flows often exceed the design capacity of 7.0 mgd. Due to its failing collection system the Facility experiences excess inflow and infiltration ("I&I") during the wet season. Excess I&I causes raw sewage to be discharged from the collection system. In addition to the I&I problems, the Facility also experiences collections system overflows, and the discharge of untreated waste. Although these overflows are often addressed by Ukiah, Ukiah fails to properly report these overflows to the RWQCB. By law Ukiah must report telephonically within 24 hours of a release and follow that oral report with a written report within five days of the event. Although it is estimated that Ukiah experiences on the average two collection system discharges per month. Ukiah only reports collection system discharges which reach surface waters.

During the non-discharge season (May 15th through September 1st) the discharge of waste from the Ukiah Facility to the Russian River is prohibited. During this time Ukiah discharges its waste from the Facility to three percolation ponds. These ponds are not lined and are hydrologically connected to the Russian River. Due to this hydrological connection, pollutants are discharged from these ponds to the Russian River or its tributaries in violation of Ukiah's Permit.¹

Each month Ukiah is required to submit a discharge monitoring report ("DMR"). The DMR must include a certification and any noncompliance.² Ukiah consistently fails to certify its DMRs to the RWQCB and often fails to report non-compliance particularly discharges of untreated waste from the collection system at the Facility.

From August 13, 1999 through August 13, 2004 and continuing through the present, Ukiah has violated the requirements of its Permit, the Basin Plan and the Code of Federal Regulations as those requirements are referenced in Ukiah's Permit for discharge limitations, effluent limitations, receiving water

¹ Page 5 of Order No. 99-65, Discharge Prohibitions A(2), A(3), and A(6)

² Page 13 Section 11(c) and Page 15 Section 12(g) respectively, of Order No. 99-65.

City of Ukiah Wastewater Treatment Plant
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limitations, monitoring and reporting requirements and unpermitted discharges due to failures in the collection system, as evidenced and reported by Ukiah in its monthly self monitoring reports ("SMRs") or DMRs, its own testing data compiled in compliance with its Permit or other orders of the RWQCB, and other documentation filed with the RWQCB or maintained by Ukiah in its normal course of business. These violations also include the lack of data required from

Ukiah as evidence of its compliance with the Clean Water Act or enabling regulations. Furthermore, these violations are continuing.

II. VIOLATIONS

The Clean Water Act requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement River Watch has identified Ukiah's NPDES permit with specificity. It has also used the actual language of the Permit to describe the various violations.

2. *The activity alleged to constitute a violation.*

To comply with this requirement River Watch has set forth below narratives describing with particularity the activities leading to violations.

3. *The person or persons responsible for the alleged violation.*

The person or persons responsible for the alleged violations are Ukiah and its employees responsible for compliance with Ukiah's Permit.

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in Ukiah's Permit and in records either created or maintained by or for Ukiah which relate to Ukiah's Facility and related activities.

5. *The date or dates of violation or a reasonable range of dates during which the*

City of Ukiah Wastewater Treatment Plant
Notice of Violations and Intent to File Suit - CWA
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alleged activity occurred.

River Watch has examined Ukiah's records for the period from August 13, 1999 through August 13, 2004. Therefore, the range of dates covered by this Notice is from August 13, 1999 through August 13, 2004. River Watch will from time to time update this Notice to include all violations which occur after the range of dates currently covered by this Notice. Some of the violations are continuous and therefore each day is a violation. The remainder of the violations and dates are evidenced in Ukiah's own records or the records of other agencies including the RWQCB, County Health and the local police department.

6. *The full name, address, and telephone number of the person giving notice.*

This information can be found at the end of this Notice.

The following violations occurred between August 13, 1999 and August 13, 2004 and are evidenced in Ukiah's records and the RWQCB records identified in this Notice. The listings below are organized around Ukiah's Permit using the same headings as in the Permit itself.

A. Discharge Prohibitions

<u>Violations</u>	<u>Description</u>
1825	Discharge of raw sewage due to collection system wastewater overflows in violation of A(2), A(3) and A(5) of Order No. 99-65.

Collection system overflows include discharges caused by surface overflows directly from overflowing manholes as well as underground exfiltration reaching waters of the State. Surface overflows are evidenced in Ukiah's Sewage System Overflow Reports, such as those reported on 10/31/2002 regarding overflows which occurred on 10/24/2002 and 10/28/02, and overflows reported on 5/19/2003 and 1/28/03. All such reports contain a detailed description of the date, location, conditions and activities constituting the violation. Underground discharges are alleged to have been continuous throughout the five year period from August 13, 1999 through August 13, 2004. Evidence to support the allegation of underground discharge of raw sewage exists in Ukiah's own data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, and influent flow volumes to the treatment plant reported in Ukiah's DMRs, generally referred to as mass balance data. Additional evidence of underground discharges is discoverable through a video inspection of the collection system and testing of

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waterways adjacent to sewer lines for nutrients, pathogens and other constituents indicative of sewage contamination, such as caffeine.

Remedial steps Ukiah could take to avoid future discharges of raw sewage from its collection system include a thorough, ongoing video inspection of its sewage lines, sampling of creeks adjacent to sewage lines for tracer elements such as caffeine and commitment of adequate resources to repair damaged sections in a timely manner as they are disclosed by the video inspections, creek studies and surface overflows.

- 50 Failure to report violations of discharge of raw sewage due to collection system wastewater surface overflows in violation of, A(2), A(3) , A(5) and Section 12(g) of Order 99-65.

Evidence of failure to report discharge of raw sewage due to collection system wastewater surface overflows exists in Ukiah's records of incident calls and listings of sewage stoppages which resulted in overflows not reported because they allegedly did not reach surface waters by overland drainage, such as a spill at Dora and Clay in Ukiah on 9/28/00, and a spill from the manhole at Gobbi and Oak in Ukiah on 3/17/02.

1. A(2) DISCHARGE PROHIBITIONS - Creation of a pollution, contamination, or nuisance, as defined by Section 13050 of the California Water Code (CWC) is prohibited. [Health & Safety Code, Section 5411]
2. A(3) Discharge Prohibitions -There shall be no discharge of waste to land, which is not owned, or under agreement to use by the discharger.
3. A(5) Discharge Prohibitions-The discharge of untreated waste from anywhere within the collection, treatment, or disposal facility is prohibited.
4. 12(g) Noncompliance reporting: The permittee shall report any non compliance at the time monitoring reports are submitted. The written submission shall contain a description of the non-compliance and its cause; the period of noncompliance, including exact dates and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate

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and prevent recurrence of the noncompliance.

675 Discharge of waste from Ukiah's Facility percolation ponds to the Russian River between May 15th and September 30th in violation of A(6) Order No. 99-65. Violations are alleged to have been continuous over the five year period from August 13, 1999 through August 13, 2004, between May 15th and September 30th of each year.

675 Failure to report violations of waste discharge from Ukiah's Facility percolation ponds to the Russian River between May 15th and September 30th in violation of A(6) and Section 12(g) of Order No. 99-65.

5. A(6) Discharge Prohibitions-The discharge of waste from the City of Ukiah Wastewater Treatment Plant and Disposal Facilities to the Russian River or its tributaries during the period May 15 through September 30 each year is prohibited.

Remedial steps Ukiah could take to avoid future discharges of waste from its storage ponds to the Russian River during the period May 15th through September 30th include lining the ponds, which the RWQCB is requiring for new ponds, and complete reuse during the non-discharge period.

These enumerated violations are based upon review of the RWQCB files for Ukiah as well as monitoring data submitted by Ukiah to the RWQCB.

Pursuant to § 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), each of the above described violations of the Clean Water Act subjects the violator to a penalty of up to \$27,500.00 per day per violation for violations occurring within five (5) years prior to the initiation of a citizen enforcement action.

In addition to civil penalties, River Watch will seek injunctive relief preventing further violations, pursuant to Clean Water Act § 505(d), 33 U.S.C. § 1365(a) & (d), and such other relief as is permitted by law. Lastly, Clean Water Act § 505(d), 33 U.S.C. § 1365(d), permits prevailing parties to recover costs and fees.

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River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and ground water in Northern California. River Watch is organized under the laws of the State of California. Its address is 74 Main Street, Suite D., P.O. Box 1360, Occidental, CA, 95465. Its telephone number is 707-874-2579.

The violations of Ukiah as set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the Russian River area. The members of River Watch use this watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shell fish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by Ukiah's violations of the Clean Water Act.

River Watch has retained legal counsel to represent them in this matter. All communications should be addressed to:

Jack Silver, Esq.
Post Office Box 5469
Santa Rosa, CA 95402-5469
Tel. 707-528-8175

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under § 505(a) of the Clean Water Act against Ukiah for violations at its Facility.

During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations noted in this Notice; however, if Ukiah wishes to pursue such discussions in the absence of litigation, it is suggested that Ukiah initiate those discussions within the next twenty (20) days so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when that period ends.

Very truly yours,

/s/
Jack Silver

City of Ukiah Wastewater Treatment Plant
Notice of Violations and Intent to File Suit - CWA
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cc:

Michael Leavitt, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 3213A
Washington, D.C. 20460

Wayne Nastri, Regional Administrator
U.S. Environmental Protection Agency Region 9
75 Hawthorne St.
San Francisco, CA 94105

Celeste Cantù, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

David Rapport, City Attorney
City of Ukiah
Rapport & Marston
405 W. Perkins Street
Ukiah, CA 95482

Head of Public Works
City of Ukiah
Department of Public Works
300 Seminary Avenue
Ukiah, CA 95482

EXHIBIT B

to [Proposed] Consent Decree and Order

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-542-7139
warrioreco@yahoo.com



April 13, 2005

**CERTIFIED MAIL --
RETURN RECEIPT REQUESTED**

Head of Operations/Managing Agent
Ukiah Valley Sanitation District
501 Low Gap Road, Room 1090
Ukiah, California 95482

RE: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Head of Operations:

Section 505(b) of the Federal Water Pollution Control Act ("Clean Water Act") requires that sixty (60) days prior to the initiation of a civil action under 33 U.S.C. § 1365(a), § 505(a) of the Clean Water Act, a citizen must give notice of his/her intent to sue to the alleged violator, the U.S. Environmental Protection Agency, the State in which the violations occur and the registered agent of the alleged violator.

Northern California River Watch ("River Watch") hereby places Ukiah Valley Sanitation District ("District") on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch intends to bring suit in Federal District Court against the District for its continuing violations of "an effluent standard or limitation", permit condition or requirement and/or "an order issued by the Administrator or a State with respect to such standard or limitation" under § 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Basin Plan, as exemplified by the incidents of non-compliance listed below.

I. BACKGROUND

The Clean Water Act regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of several enumerated statutory exceptions. One such exception authorizes a polluter who has been issued a permit pursuant to the National Pollutant Discharge Elimination System ("NPDES"), to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a polluter in violation of 33 U.S.C. § 1311(a). Private parties may bring citizen's

suits pursuant to 33 U.S.C. § 1365 to enforce effluent standards or limitations, which are defined as including violations of 33 U.S.C. § 1311(a), 33 U.S.C. § 1365(f)(1).

The Clean Water Act provides that, in any given state or region, authority to administer the NPDES permitting system can be delegated by the federal Environmental Protection Agency ("EPA") to a state or regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria. 33 U.S.C.

§ 1342(b). In California, the EPA has granted authorization to a state regulatory apparatus, comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards, to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this Notice is the Regional Water Quality Control Board, North Coast Region, ("RWQCB").

The City of Ukiah ("City") owns, maintains, and operates a wastewater treatment, reuse and disposal facility ("Facility") which serves the City and adjacent areas. The Facility is permitted to discharge into the Russian River. The City also transports and treats wastewater from the District. The Central Office of the District is located at 501 Low Gap Road, Room 1090, Ukiah, CA 95482. The District is responsible for operating and maintaining the collection system outside the City limits. The City performs maintenance under contract on collection system sewer lines owned by the District. The District and the City are jointly and severally liable for unauthorized discharges from the District's collection system.

The Facility is designed for an average dry weather flow of 2.8 mgd and wet weather flows of 7.0 mgd. Although current average dry weather flows are close to the Facility's design of 2.8 mgd, the wet weather flows often exceed the design capacity of 7.0 mgd. Due to its failing collection systems, the District experiences excess inflow and infiltration ("I&I") during the wet season. Excess I&I causes raw sewage to be discharged from the collection system. In addition to the I&I problems, the collection system also experiences overflows, and the discharge of untreated waste. The collection system's I&I problems have caused discharges of raw sewage to surface waters in violation of the prohibition of the Clean Water Act with regard to discharging a pollutant from a point source to waters of the United States without a NPDES permit, Clean Water Act § 301(a), 33 U.S.C. § 1311(a).

Pursuant to § 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), the EPA and the State of California have formally concluded that violations by the District are prohibited by law. Beneficial uses of the Russian River in the vicinity of collection system discharges are being affected in a prohibited manner by these violations. Pursuant to § 304 of the Clean Water Act, 33 U.S.C. § 1311, the EPA and the State have identified the District's collection system as a point source, the discharges from which contribute to violations of applicable water quality standards.

From April 13, 2000 through April 13, 2005 and continuing through the present, the District has violated the Clean Water Act, the Basin Plan and the Code of Federal Regulations for discharging pollutants to waters of the United States from its sewage collection system, without a NPDES permit. Said violations are evidenced and reported by staff at the City's wastewater treatment and disposal plant in the plant's monthly self monitoring reports ("SMRs") or daily monitoring reports ("DMRs"), its own testing data compiled in compliance with its

Waste Discharge Orders or other orders of the RWQCB, and other documentation filed with the RWQCB or in its possession. Furthermore these violations are continuing.

II. VIOLATIONS

The Clean Water Act requires that any notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement River Watch has identified the prohibition against discharging a pollutant from a point source to waters of the United States without a NPDES permit, Clean Water Act § 301(a), 33 U.S.C. § 1311(a), as the specific standard alleged to have been violated.

2. *The activity alleged to constitute a violation.*

To comply with this requirement River Watch has set forth narratives below, describing with particularity the activities leading to violations.

3. *The person or persons responsible for the alleged violation.*

The person or persons responsible for the alleged violations are the District and its employees and contractors responsible for maintenance of the District's sewage collection system.

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in records either created or maintained by or for the City which relate to its Facility and related activities.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined the City's records for the period from April 13, 2000 through April 13, 2005. Therefore, the range of dates covered by this Notice is from April 13, 2000 through April 13, 2005. River Watch will from time to time update this Notice to include all violations which occur after the range of dates currently covered by this Notice. Some of the violations are continuous and therefore each day is a violation. The remainder of the violations and dates are evidenced in the City's own records or the records of other agencies including the RWQCB, County Health and the local police department.

6. *The full name, address, and telephone number of the person giving notice.*

This information can be found at the end of this Notice.

The following violations occurred between April 13, 2000 and April 13, 2005 and are evidenced in the City's records and the RWQCB records identified in this Notice.

A. Discharge Prohibitions

<u>Violations</u>	<u>Description</u>
182	<p>Discharge of raw sewage due to collection system wastewater overflows .</p> <p>Collection system overflows include discharges caused by surface overflows directly from overflowing manholes as well as underground exfiltration reaching waters of the United States. Surface overflows are evidenced in the City's Sewage System Overflow Reports, such as those reported on 10/31/2002 regarding overflows which occurred on 10/24/2002 and 10/28/02, and overflows reported on 5/19/2003 and 1/28/03. All such reports contain a detailed description of the date, location, conditions and activities constituting the violation. Underground discharges are alleged to have been continuous throughout the five year period from April 13, 2000 through April 13, 2005. Evidence to support the allegation of underground discharge of raw sewage exists in the City's data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, and influent flow volumes to the treatment plant reported in the City's DMRs, generally referred to as mass balance data. Additional evidence of underground discharges is discoverable through a video inspection of the collection system and testing of waterways adjacent to sewer lines for nutrients, pathogens and other constituents indicative of sewage contamination, such as caffeine.</p>

Remedial steps the District could take to avoid future discharges of raw sewage from its collection system include a thorough, ongoing video inspection of its sewage lines, sampling of creeks adjacent to sewage lines for tracer elements such as caffeine, a greater commitment of resources to source reduction for elements such as grease, and commitment of adequate resources to repair damaged sections in a timely manner as they are disclosed by the video inspections, creek studies and surface overflows.

These enumerated violations are based upon review of the RWQCB files for the District and the City as well as monitoring data submitted by the City to the RWQCB.

Pursuant to § 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), each of the above described violations of the Clean Water Act subjects the violator to a penalty of up to \$27,500.00 per day per violation for violations occurring within five (5) years prior to the initiation of a citizen enforcement action.

In addition to civil penalties, River Watch will seek injunctive relief preventing further violations, pursuant to Clean Water Act § 505(d), 33 U.S.C. § 1365(a) & (d), and such other

relief as is permitted by law. Lastly, Clean Water Act § 505(d), 33 U.S.C. § 1365(d), permits prevailing parties to recover costs and fees.

River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and ground water in Northern California. River Watch is organized under the laws of the State of California. Its address is 6741 Sebastopol Ave., Suite 140, Sebastopol, CA 95472. Telephone 707-824-4372.

The violations of the District as set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the Russian River area. The members of River Watch use this watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shell fish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the District's violations of the Clean Water Act.

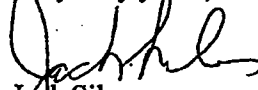
River Watch has retained legal counsel to represent them in this matter. All communications should be addressed to:

Jerry Bernhaut, Esq.
Jack Silver, Esq.
Law Office of Jack Silver
Post Office Box 5469
Santa Rosa, CA 95402-5469
Tel. 707-528-8175

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under § 505(a) of the Clean Water Act against the District for violations at the Facility.

During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations noted in this Notice; however, if the District wishes to pursue such discussions in the absence of litigation, it is suggested that the District initiate those discussions within the next twenty (20) days so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when that period ends.

Very truly yours,



Jack Silver

cc:
Stephen L. Johnson, Acting Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 3213A
Washington, D.C. 20460

Wayne Nastri, Regional Administrator
U.S. Environmental Protection Agency Region 9
75 Hawthorne St.
San Francisco, CA 94105

Celeste Cantü, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

David Rapport, City Attorney
City of Ukiah
Rapport & Marston
405 W. Perkins Street
Ukiah, CA 95482

Head of Public Works
City of Ukiah
Department of Public Works
300 Seminary Avenue
Ukiah, CA 95482

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DECLARATION OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States and employed in the County of Alameda; I am over the age of eighteen years and not a party to the within entitled action; my business address is Jarvis, Fay & Doporto, LLP, Oakland, California 94612

On November 21, 2005, I served the within: **NOTICE OF PROPOSED CONSENT DECREE AND ORDER** on the parties in this action, by placing a true copy thereof in a sealed envelope(s), each envelope addressed as follows:

Jack Silver, Esq.
Jerry Bernhaut, Esq.
Law Offices of Jack Silver
Post Office Box 5469
Santa Rosa, CA 95402

Michael Leavitt, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 3213A
Washington, D.C. 20460

Alberto R. Gonzales, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Wayne Nastri, Regional Administrator
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

☐ (By First Class Mail) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail to be mailed by First Class mail at Oakland, California.

☐ (By Messenger) I caused each such envelope to be delivered by messenger to the offices of each addressee above.

☐ (BY CALIFORNIA OVERNIGHT) I caused each such envelope to be sent by California Overnight to the offices of each addressee above

☐ (By Facsimile) I caused each such document(s) to be sent via facsimile to the addressee(s) above.

☒ (X) (By Overnight Mail) I caused each such envelope to be sent by Overnight Mail to the offices of each addressee above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed November 21, 2005 at Oakland, California.


Bobette M. Tolmer